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SUPREME COURT, U. S.

No. 71-1060

In the Supreme Court of the United States

OCTOBER TERM, 1971

GEORGE A. TSAKALOTOS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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After a jury-waived trial in the United States District Court for the Southern District of New York, petitioner was convicted of having made a false statement to the United States Coast Guard in an application for Renewal of a License as Master of Steam and Motor Vessels, in violation of 18 U.S.C. 1001. On August 31, 1971, petitioner was fined $4,000, which he subsequently paid. The court of appeals affirmed without opinion.

Coast Guard Regulations, as printed on the application form for renewal of master's license, provide (A. 22-22b):[1]

> Applicants for renewal of a master's, mate's, or pilot's license shall present evidence of service on the waters for which licensed, obtained within the 3 years next preceding the date of application, or shall present evidence of employment in a position closely related to the operation of vessels within the same 3-year period.

Petitioner stated on his application for renewal, filed on November 16, 1964, that he had served as a master of the S/S *Theonymphos Tinou* from August 25, 1964, to October 26, 1964, as it navigated through international waters (A. 22). This statement was, as petitioner concedes, false (Pet. 11).[2]

An applicant for a master's license must in addition pass a Coast Guard examination of his knowledge of the International Rules of the Road. An open-book examination, which the applicant virtually cannot fail (Tr. 255), is given those fulfilling the quoted requirement in the application. If the applicant does not fulfill the requirement of past service or related employment, however, he must take a closed-book ex-

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[1] "A" refers to the two-volume Joint Appendix submitted to the court below; "Tr." refers to the transcript of trial proceedings contained in the Appendix, but paginated without the prefix "A". We are lodging a copy of the Joint Appendix with the Clerk of this Court.

[2] Petitioner made no attempt on the application to satisfy the alternate requirement of employment "closely related to the operation of vessels."

amination. A Coast Guard Commander testified that the closed-book examinations "are probably the toughest examinations in the United States" (Tr. 256).

In a letter dated December 16, 1964, Captain Skinitis, marine superintendent for the Tsakalotos Navigation Corporation of which petitioner was president, affirmed that petitioner had served at sea and added that petitioner was also employed as port captain for the company (A. 22c).[3] The letter was filed with the Coast Guard on December 18, 1964, and that same day petitioner took and passed the open-book examination.

At the conclusion of the government's case, counsel for petitioner argued that the concededly false statement of sea service, contained in the application, was immaterial in light of the representation in the Skinitis letter that petitioner was employed as a port captain, a circumstance which, standing alone, would have qualified him to take the open-book examination (Tr. 184-190). The trial judge observed that materiality was not an element of the offense but further determined that under the circumstances the statement of sea service was nevertheless material (Tr. 188-190).

Petitioner contends that the Second Circuit is unique in permitting conviction under 18 U.S.C. 1001

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[3] On rebuttal, the government showed that this letter had been dictated by petitioner himself, who then directed Captain Skinitis to sign it. The witness, petitioner's secretary, added that Skinitis' facility with the English language was extremely poor and that his correspondence was therefore in Greek.

without requiring proof of the materiality of the false statement and that review by this Court is warranted by a conflict among the circuits (Pet. 18-27). The Second Circuit's interpretation of Section 1001 is consistent with the language of the statute, which proscribes the concealment of a material fact or the making of any false statement. As that court observed in a prior case, when it first had occasion to consider the issue of materiality, "it is of doubtful wisdom, not to say potentially dangerous, to import conditions into a penal statute which appear to have been studiously omitted by the lawmakers themselves." *United States* v. *Silver*, 235 F.2d 375, 377, certiorari denied, 352 U.S. 880. However, it is unnecessary to reach this issue in this case since, irrespective of the rule of the Second Circuit, the district judge specifically found that the government had established the materiality of petitioner's false statement, on the ground that the crime was complete upon the filing of the application (Tr. 189-190). Although, as petitioner notes (Pet. 18), the trial judge's finding preceded the presentation of the defense, the evidence presented by the defense was only to the effect that, because of the recitation of his employment set forth in the letter from Captain Skinitis, petitioner would have qualified for the open-book examination without the statement concerning service at sea (Tr. 246-251, 261). This evidence in effect merely repeated the defense argument which had been advanced prior to the trial judge's ruling.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

APRIL 1972.

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